

(2008) 04 MAD CK 0092

In the Madras High Court

Case No : Writ Appeals No. 1528 of 2007 and 96 of 2008

Madras Seva Sadhan Higher Secondary School

APPELLANT

Vs

K.M. Valliappan and The Joint Director of School Education
(Higher Education) and Appellate Authority

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Tamil Nadu Private Recognised Private Schools (Regulation) Act, 1973 — Section 22(1), 22(3), 23, 25, 44

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 17(1), 17(2), 17(3)

Citation : (2008) 04 MAD CK 0092

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : C. Ravichandran, in WA No. 1528 of 2007 and S. Rajasekaran, Additional Government Pleader in WA No. 96 of 2008, for the Appellant; R. Subramanian, for Respondent 1, C. Ravichandran, for Respondent 2 in WA No. 96 of 2008 and S. Rajasekaran, Additional Government Pleader for Respondent 2 in WA No. 1528 of 2007, for the Respondent

Judgement

K. Raviraja Pandian, J.—These two appeals arise out of the order dated 13.02.2007 made in writ petition No. 8335 of 2003. Writ Appeal

No. 1528 of 2007 is filed by Madras Seva Sadan Higher Secondary School (hereinafter referred to as "the school" for short) and the Writ Appeal

No. 96 of 2008 is filed by the Government, the Education Department (hereinafter referred to as "the Government", for short)

2. By the impugned order the learned single Judge apportioned the liability for payment of salary to the first respondent in both the appeals, i.e., for

the period from 07.12.1995 to 25.03.1999, the liability was fastened on the school and for the period from 26.03.1999 till the date of retirement

of the first respondent, i.e., on 31.05.2003, the liability for payment of the salary was fastened on the Government. The school management as well

as the Government, aggrieved by that portion of the order fastening the liability on them, have filed the respective appeals.

3. The material facts which formed the basis for filing the appeals are:

The first respondent Valliappan was working as a Headmaster in the appellant school. When he was in service, charges were framed against him

for certain irregularities and after conducting an enquiry he was dismissed from service on 07.12.1995. The Chief Educational Officer has

accorded approval for such dismissal on 25.03.1999. The first respondent-Headmaster (hereinafter referred to as "the Headmaster" for short)

aggrieved by the said order of dismissal, filed an appeal before the Joint Director of School Education (higher education) who is the first appellate

authority under the provisions of the Tamilnadu Recognised Private School (Regulation) Act, who by his order dated 31.08.2000 has set aside the

order of dismissal and directed the school management to reinstate the Headmaster forthwith. Not accepting the order of the first appellate

authority, the school management filed a further appeal to the Private School Tribunal in CMA No. 170 of 2002. The Tribunal by its order dated

22.10.2002 allowed the appeal thereby confirming the order of dismissal. The Headmaster filed writ petition which is the subject matter of these

appeals pointing out certain procedural irregularities in the conduct of the disciplinary proceedings. In respect of the issue relating to the holding of

the disciplinary proceedings by a sub committee appointed by the school committee as there were conflict of views, the writ petition was referred

to a Full Bench to resolve the issue. The Full Bench, by its order dated 04.09.2006 approved that the ratio of the decision of the Division Bench of

this Court in the case of Saradha Balakrishnan Vs. The Director of Collegiate Education and Another, with certain clarifications, and quashed the

order of dismissal. After dictation of the order, the Headmaster and the school management appear to have placed before the Full Bench a joint

memo in respect of the liability of the school management to make the payment of arrears of salary.

4. The Full Bench, however, relegated the issued as to whether the school or the Government is liable to pay the arrears of salary and whether the

liability could be apportioned between them to be decided by the learned single Judge. It is pertinent to state here that when the matter was pending before the authorities concerned, the Headmaster reached the age of superannuation on 31.05.2002. The learned Judge, by the order impugned in these writ appeals, has held that the management is liable to pay the salary for the period from 07.12.1995, i.e., date of the order of dismissal to 25.03.1999 the date on which approval was accorded for such the dismissal, by holding that the order of dismissal during that period has not in accordance with law. For the subsequent period, i.e., from 26.03.1999 till the date of retirement of the Headmaster 31.05.2003 because of the approval granted by the Chief Educational Officer, the learned Judge was of the view that the Government has to bear the amount towards arrears of salary payable to the Headmaster. The correctness of the said order is canvassed before us by the School as well as the Government.

5. We heard the learned Counsel Mr.C.Ravichandran, who represented the school and Mr.Rajasekaran, Additional Government Pleader representing the Government and Mr.R.Subramanian, learned Counsel for the Headmaster. We have also perused the materials available on record.

6. In order to appreciate the reasoning given by the learned single Judge we are of the view that it is necessary to extract the relevant portion of the order:

The first appellate authority, namely the Joint Director of School Education (Higher Education), the first respondent herein by the order dated 31.08.2000 by relying upon the Section 17(1) of the Act, (sic Rule 17(1) of the Tamilnadu Recognised Private Schools (Regulation) Rules, 1974) has held that the dismissal of the petitioner from service from 07.12.1995 is not valid in law and directed the second respondent to reinstate the petitioner as Headmaster. It is also seen on record that after the Chief Educational Officer passed orders dated 25.03.1999 in and by which he has accorded permission for dismissal of the petitioner, it is at the most valid only from the said date of permission as per Section 17(1) of the Act. The petitioner immediately, thereafter, has filed the appeal before the first respondent on 24.04.1999 itself. It is well within the period of limitation and

thereafter, the first respondent being the first appellate authority, as stated above, has directed the petitioner's reinstatement as Headmaster.

Therefore, for the period between 07.12.1995 and 25.03.1999 during which time, the second respondent has dismissed the petitioner from

service without following the provisions of the Tamil Nadu Private Recognised Private Schools (Regulation) Act, 1973 (sic - Tamil Nadu

Recognised Private Schools (Regulation) Act, 1973), namely without obtaining prior permission from the Chief Educational Officer, I am of the

view that the amount towards pay arrears payable to the petitioner for this period, i.e., 07.12.1995 to 25.03.1999 has to be borne only by the

second respondent management.

As far as the payment of salary from 26.03.1999 till the date of retirement of the petitioner, i.e., 31.05.2003, when the Chief Educational Officer

who is the authority under the Act has accorded permission, I am of the view that it is the first respondent who has to bear the amount towards

arrears of pay payable to the petitioner for this period, since ultimately the Hon"ble Full Bench by its judgment dated 04.09.2006 has set aside the

order of dismissal and therefore, there is absolutely no difficulty to come to conclusion that the salary for the period from 26.03.1999 till the date of

retirement of the petitioner, i.e., 31.05.2003 has to be borne by the first respondent.

7. Let us consider as to who is liable to pay the arrears of salary with reference to the statutory provisions. Section 22(1) of the Tamil Nadu

Recognised Private School (Regulation) Act provides as follows:

22. Dismissal, Removal or reduction in rank or suspension of teachers or other persons employed in private schools.

(1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed or

reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

Section 44 of the Act reads as under:

Section 44. Deposit with the Tribunal of pay and allowances of teachers and other persons employed in private schools in certain cases:

1. If the appellate authority referred to in Section 23 has, in any appeal under that section against the dismissal or removal or reduction in rank or

the termination otherwise of the appointment of any teacher of other person employed in any private school, make an order restoring such teacher

or other employee as such, no appeal against the order of such restoration shall be preferred to the Tribunal and no appeal (against the order of

such restoration) which, u/s 25, stands transferred to the Tribunal shall be proceeded with by the Tribunal unless the educational agency deposits

with the Tribunal all arrears of pay and allowances due to such teacher or other person from the date of his dismissal or removal or reduction in

rank or termination otherwise of his appointment up to the date of deposit, and continues to deposit the pay and allowances due to such teacher or

other person until the termination of the proceedings before the Tribunal.

2. The deposit under Sub-section (1) shall be made within such time and in such manner as may be prescribed.

3. Where there is any dispute as to the amount to be deposited under Sub-section (1), the Tribunal shall, on application made to it either by the

educational agency or by such teacher or other person, and after making such inquiry as it deems fit, determine summarily the amount to be so

deposited.

4. If the educational agency fails to deposit the amount as aforesaid, the Tribunal shall, unless the educational agency shows sufficient cause to the

contrary, stop all further proceedings and make an order directing the educational agency to restore such teacher or other employee as such.

5. (a) Where, as a result of any final order made by the Tribunal at the conclusion of the proceedings before it, such amount of pay and allowances

as becomes due to such teacher or other person, shall be paid to him out of the amount deposited under Sub-section (1).

(b) If there is any balance left of the amount deposited under Sub section (1) after payment under Clause (a) of the pay and allowances referred to

in that clause, such balance or, where no amount becomes due as aforesaid to such teacher or other person, the whole of the amount deposited

under Sub-section(1) shall be returned to the educational agency.

Rule 17(1) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 reads as under:

17. Dismissal, removal or reduction in rank or suspension of teacher or other persons employed in private school.--

(1) The competent authorities to accord prior approval of the dismissal, removal or reduction in rank of a teacher or other person employed in any private school shall be the District Educational Officer in respect of teacher or other person employed in Pre-primary, Primary and Middle schools and the Chief Educational Officer in respect of teacher or other person employed in High Schools, Higher Secondary Schools and Teacher Training Institutes.

(2)(i) Whenever a teacher or other person employed in a private school is kept under suspension, such suspension shall immediately on the date of issue of the suspension order be intimated by the Secretary of the School Committee to the District Educational Officer concerned along with a copy of the suspension order.

(ii) On receipt of intimation regarding the suspension of a teacher or other person as mentioned in Clause (i) above the District Educational Officer concerned shall make payment of subsistence allowance to the Teacher or other person who is placed under suspension every month from the date of suspension for not more than two months at half the rate of pay which he was drawing at the time of suspension and in addition the Dearness Allowance if admissible on the basis of such pay.

(iii) Whenever the competent authority has extended the period of suspension of a teacher or other person under the proviso to Clause (b) of Sub section (3) of Section 22 of the Act, he shall intimate such extension of suspension to the District Educational Officer concerned. On receipt of such intimation the District Educational Officer concerned shall make payment of subsistence allowance to the teacher or other person who is placed under suspension for a further period not exceeding two months at half the rate of pay which he was drawing at the time of suspension and in addition; the Dearness Allowance if admissible on the basis of such pay.

(iv) The District Educational Officer concerned shall send an intimation regarding the payment of the subsistence allowance under Clauses (ii) and (iii) above to a teacher or other person who is placed under suspension to the Secretary of the School Committee.

(v) The payment of subsistence allowance shall be limited to maximum of four months in all.

(3) (i) Where after enquiry, including the appeal, a suspension is found to be not

justified, the management shall remit the amount of subsistence allowance paid to the teacher or other person, employed in that private school to the Government in one lumpsum under the appropriate head of account. The Educational Agency shall however, pay such teacher or other person the full pay and allowances he would have drawn but for his suspension less the amount of subsistence allowance already paid to the teacher or other person for the suspension period from the funds of the management without any claim from grant.

(ii) Where a substitute is appointed in the place of a teacher or other person employed in a private school kept under suspension, the management shall not be entitled to any grant in respect of such a substitute.

(iii) Where the appellate authority has decided against the imposition of penalty of dismissal or removal from service or placement under suspension of a Teacher or other person employed in a private school by the management of that school, the management of every private school, not being a minority school, shall implement the order of the Appellate Authority and reinstate the teachers or other persons with all back wages for the period of dismissal or suspension or removal within one month from the date of order of the Appellate Authority, failing which, apart from resumption of the post, recognition shall be withdrawn.

8. A cursory reading of the above provisions make it clear that no teacher employed in a private school shall be dismissed nor his appointment be otherwise terminated, except with the prior approval of the competent authority.

9. Hence, the order dated 07.12.1995 by the school management dismissing the Headmaster is not in accordance with the statutory provisions. It

is also undisputed that the Joint Director, the first appellate authority has set aside the order of dismissal on 31.08.2000 and directed the school

management to reinstate the Headmaster forthwith. Section 44 casts a duty upon the school management to deposit the entire amount of salary

when the appeal is pending before the Tribunal and as a matter of fact, in this case also such deposit has been made. Sub clause 5 of Section 44

provides that where, as a result of any final order made by the Tribunal at the conclusion of the proceedings before it, such amount of pay and

allowances as becomes due to such teacher or other person, shall be paid to him out of the amount deposited under Sub-section (1). Rule 17(2) of

the Rules provides that during the period in which a teacher was kept under suspension that has to be intimated to the District Educational Officer

concerned and on such intimation, the District Educational Officer concerned shall make payment of subsistence allowances to the teacher who

was placed under suspension every month. Sub-rule (3) to Rule 17 provides that where after enquiry, including the appeal, a suspension is found

to be non justified, the management shall remit to the amount of subsistence allowance paid to the teacher or other person, employed in that private

school to the Government in one lumpsum under the appropriate head of account. The Educational agency shall however pay such teacher or other

person the full pay and allowances he would have drawn, but for his suspension less the amount of subsistence allowance already paid to the

teacher and other persons for the suspension period from the funds of the management without any claim from grant. Sub Clause (iii) to Rule 17(3)

provides that where the appellate authority has decided against the imposition of the penalty of dismissal or removal from service by the

management, the management of the private school not being the minority school, shall implement the order of the appellate authority and reinstate

the teacher with all back wages for the period of dismissal within one month from the date of the order of the appellate authority. In default, the

Government, apart from the resumption of the post, can withdraw the recognition to the school.

10. It is undisputed fact that on 25.03.1999 the Chief Educational Officer accorded approval to the order of the dismissal by the management.

Thereafter, the Headmaster filed an appeal and obtained an order on 31.08.2000 from the first appellate authority setting aside the order of

dismissal and directing the management to reinstate him with due backwages. The management did not only accept the order setting aside the

dismissal order, but also the direction of the first appellate authority for reinstatement of the petitioner and thought it fit to file an appeal. Of course,

in the appeal filed before the Tribunal, the management school obtained a favourable order. However, this Court has passed orders on

04.09.2006 setting aside the order of dismissal.

11. On the basis of the above statutory provisions, we are of the considered view that that part of the order fastening the liability upon the

Government is not in consonance with the statutory provisions. It is only the school management which is liable for the payment of salary to the

Headmaster. The school receiving aid from the Government cannot militate the issue in its favour. The Joint memo filed before the Court reads as

follows:

JOINT MEMO FILED BY THE PETITIONER AND 2ND RESPONDENT

The petitioner and the 2nd respondent hereby agree on the following terms of compromise.

1. The parties agree that the total amount payable to the petitioner by the 2nd respondent towards pay arrears is Rs. 3,40,000/- (three lakhs and forty thousand only) in full and final settlement of all his claims against the institution, except PF and other terminal dues payable by the authorities.

2. The parties agree that the order of dismissal dated 21.04.1999 may be set aside and the petitioner is deemed to have retired on 31.05.2003, i.e., attaining on superannuation. The school committee shall pass appropriate resolution after complying with the statutory formalities within four weeks from the date of order and shall communicate the same to the educational authority.

3. The 2nd respondent is permitted to claim from the 1st respondent the salary arrears and subsistence allowance paid by the 2nd respondent to the petitioner and on such claim the 1st respondent shall reimburse the same within four weeks from the date of receipt of claim by the 2nd respondent.

4. The 2nd respondent will forward the proposals for terminal benefits to the concerned educational authority within 8 weeks from the date of order and on receipt of the same, the authorities shall sanction the same within four weeks thereafter.

5. The petitioner shall be paid by the pension arrears from 01.05.2003 within 12 weeks from the date of order and continue to be paid every month the pension amount by the Education Department authority.

6. The petitioner is permitted to withdraw the sum of Rs. 3,40,000/- mentioned in Clause 1 from the amount deposited to the credit of CMANo.

170 of 2000 on the file of the I Assistant City Civil Court, Chennai (Private Schools Appellate Tribunal). Similarly the 2nd respondent is permitted

to the remaining amount with accrued interest. On such payment-out petitions

filed by the petitioner/2nd respondent herein, the sum shall be ordered within two weeks from the date of production of order copy.

7. There will be no order as to costs.

12. The Joint memo is filed by the school and the Headmaster - the school agreeing to pay and the teacher agreeing to receive the pay arrears of

Rs. 3,40,000/- in full and final settlement of the claim against the institution except the statutory relief of provident fund and other terminal dues. The

joint memo between the school management and the headmaster cannot legally fasten a liability on the Government against the statutory provisions.

The conditions agreed between the school and the Headmaster are binding on them, but not the Government.

13. For the foregoing reasons that portion of the order of the learned single Judge fastening the liability on the Government is hereby set aside. As

per the statutory provisions extracted above, it is the management which is alone liable to pay the salary arrears to the Headmaster.

14. In the result, W.A. No. 1528 of 2007 filed by the school is dismissed and the W.A. No. 96 of 2008 filed by the Government is allowed.

However, there will be no order as to costs. The connected miscellaneous petitions are closed.